Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

March Term, 1980

No 79-1510

STANLEY V. TUCKER,

Petitioner

-v-

ROBERT R. ANDERSON,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE HONORABLE SECOND CIRCUIT COURT OF APPEALS

STANLEY V. TUCKER
PETITIONER
Box 35
Hartford, Conn 06101
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SUBJECT INDEX

	Page
Table of Authorities	i
Citation to Opinions Below	1
Jurisdiction	1
Questions Presented	2
Part I - Invalid Liens	2
Part II- Transfer to California For Trial	2
Major Questions For Review	2
Statutory Provisions Involved	3
Statement of the Case	4.
Summary of Argument	5
Part I	
IProceedings Below Void Violating Rule 69 FRCP	6
II. Reasoning Erronious Treating"foreign" Judgment As Domestic	7
III. Privileges & Immunities Clause Violated	8
IV. Equal Protection Violated	9
Part II	
I Trial Court Lacked Jurisdiction To Transfer to California	9
II. Trial Court Failed to Make Necessary Findings	11
III. Los Angeles Dismissal Shows Transfer Erronious	12 12
IV. All Writs Statute, 28 USC 1651, Gives Authority for Mandamus	12
Conclusion	12

INDEX TO APPENDIX

	Page
California (Ventura) Superior Court	
Declaration Disqualifying Trial Judge Willard 9-3-68	A 1
Default Judgment by Trial Judge (Disqualified) Willard	A 2
Default Judgment by Trial Judge (Disqualified) Willard	A 3
USDC- Connecticut	
Motion to Dismiss Complaint May 23, 1975 H74-364	A 4
Ruling on Motion to Dismiss June 27th, 1975 H 74-364	A 5
Ruling on Motion for Summary Judgement July 10, 1979	A 6
USCA - SECOND CIRCUIT 12-27-79	A 7
USDC- ConnTransfer Order	A 8

CITATIONS

28 USC 1404	4,6,9,11
28 USC 1254 (1)	1
28 USC 1651	12
Rule 17 FRCP	3
Rule 69 FRCP	2,3 6
Constitution Art IV Sec 2	8
California Civil Code of of Proceedure 338	10
Conn GS 47-5	4

CITATIONS - continued

	Page
Conn GS 52-577	10
Conn GS 52-590	8
Conn GS 52-605 - 609	2,3,5,8
Caleshu v Wangelin 549 F 2d 93	12
Hoffman v Blaski 363 US 335	11
Lynden Transport v Alaska 532 P 2d 700	9
Juneau Spruce v Longshoremens 128 F Supp 697	7
Stanford v Utley 341 F 2d 265	7
State v Nolfi 358 A 2d 853	8
Sully v American Nat Bank 178 US 289	9
Van Dusen v Barrack 376 US 622	6
Wietz v Philips 251 F Supp 789	6

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PETITION FOR A WRIT OF CERTIORARI TO THE SECOND CIRCUIT COURT OF APPEALS

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the Second Circuit Court of Appeals entered December 27th, 1979, Infra Appendix

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CITATION TO OPINIONS BELOW

The opinion of the Second Circuit Court of Appeals is unreported and printed in the Appendix Infra

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JURISDICTION

The Jurisdiction of this Court to review the decision of the 2nd Circuit Court of Appeals is conferred by 28 USC 1254 (1).

QUESTIONS PRESENTED

Part I - Invalid Liens

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1. Are the assignment of judgment liens void and unenforceable as not complying with either the laws of Connecticut or California on the assignment of real property interests.

2. Are the registrations of the foreign judgments void for failure to comply with Conn. GS 52-605-609?

3. Must a federal court in collecting a judgment comply with all state law procedures and laws under Rule 69 FRCP

4. Is Anderson a real party in interest

Part II - Transfer of Counter-Claims to California for Trial.

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1. Did the Trial Judge exceed his jurisdiction in making such a transfer.

2. Did the Trial Judge Neglect his duties failing to make necessary findings and leaving it up to the Los Angeles Judge to decide matters.

MAJOR QUESTION FOR REVIEW

The Honorable Second Circuit Court of Appeals has decided important questions of federal law in a way that is in conflict with decisions of this Honorable Court and in conflict with decisions of other Circuit Courts of Appeal.

STATUTORY PROVISIONS INVOLVED

Part I - Invalid Liens

This action involves violation by the Respondent of Rule 69, FRCP.

Rule 69 FRCP -"Process to enforce a judgment shall be in accordance with the practice and procedure of the state in which the district court is held"

Respondent further violates Conn GS 52-604 and 605 prohibiting a judgment brought about by default as both judgments enforced by respondent come from California state court defaults.

GS 52-604 "Foreign judgment" means any judgment of a court of the United States or of any other court except one obtained by default"

GS 52-605 "A creditor shall file a certificate that the judgment was not obtained by default in appearance"

Respondent lacks standing to collect the liens as he is not the real party in interest being only assignee for collection.

Rule 17 FRCP -"Every action shall be maintained in the name of the real party in interest"

Andersons assignments are invalid not being in form and manner of GS 47-5.

GS 47-5 " all conveyances of land shall be in writing subscribed, executed and acknowledged in manner provided for conveyances and attested by two witnesses with their own hands"

PART II - Transfer of Counter-Claims to Los Angeles for trial.

Title 28 USC 1404 "A district court may transfer any civil action to any other district or division where it might have been brought"

It is claimed that the district court exceeded his jurisdiction and mandamus relief under Title 28 USC 1651 is proper in that there was no jurisdiction to file the action in Los Angeles as Anderson lost his diversity of citizen ship two years ago when he moved to Connecticut and the California statute of limitations expired seven years ago while the Conn. limitations was extended a total of ten years under GS 52-590 by reason of Anderson's absence from the state.

GS 52-590 "In computing limitations the time any party is with out the state shall be excluded not to exceed seven years"

STATEMENT OF THE CASE

This Petitioner has for over a decade been harrassed by Respondents who filed 14 liens on real property of Petitioner when only one sufficient to provide security for claimed debt.

All of the claims flow from California state court defaults prohibited by GS 52-604 and 605. Anderson is holder of assignments made without consideration unauthenticated and void under the state law. Because he is in a federal forum the District judge ruled Anderson does not have to comply with state law. This ruling would effectively invalidate the laws of 23 states that adopted similar provisions and invalidate Rule 69 FRCP.

These actions flow out of a California divorce situation where the Petitioner was denied 8th amendment rights and imprisoned just under ten years ago. Two years ago Anderson sold his home in California, gave up all business interests and moved to Connecticut. The Petitioner filed counter-claims based upon injuries suffered in Connecticut and the District Judge transferred to Los Angeles for trial to "let the California judge decide all matters"

Los Angeles Judge Zirpoli decided he had no jurisdiction and dismissed the counter-claims.

Both issues appealed to the 2nd Circuit Court of Appeals and now on Petition for Certiorari to this Court.

SUMMARY OF ARGUMENT

A long line of federal decisions flowing from this court hold that enforcement of judgments must follow state law or it is void. This petitioner contends to hold otherwise is to violate the Priviledges and immunities clause.

The transfer to Los Angeles for trial was without jurisdiction under guidlines

issued by this court in Van Dusen v Barrack 376 US 622. 28 USC 1404 a.

CITATION TO DECISION BELOW

The decision on the motion ito dismiss is reported in Federal Rules Decisions 68 F.R.D. 461 (D Conn 1975)

ARGUMENT

I. THE PROCEEDINGS BELOW ARE VOID VIOLATING RULE 69 FRCP AND ALSO VIOLATING STATE LAW

RULE 69 FRCP -"Process to enforce a judgment... shall be in accordance with the practice and procedure where the district court is held"

Prior federal courts have held even state or federal officers or agencies must comply with state law requirements.

Wietz v Phillips 251 F Supp 789 7th C.A. "Where Secretary of Labor... filed certified copy of such judgment with the prothonotary in Pennsylvania county... Secretary submitted to all Pennsylvania laws relating to liens on property in Pennsylvania"

That the California judgments came from defaults (See Appendix infra and are foreign judgments cannot be questioned as a matter of law.

Juneau Spruce Corp v Int Longshormens
128 F Supp 697 1955 Hawaii

P 699 "28 USC 1963 does not give a new judgment to the judgment creditor. Registration is purely a ministerial act in the enforcement of a foreign judgment"

II. THE DISTRICT COURT's REASONING WAS ESCALATED FAR FROM REALITY IN DEFENDING THE "FOREIGN JUDGMENT" AS IF IT WERE ONE MADE IN CONNECTICUT

See Ruling by District Court Appendix

"If fully imported into the federal practice this statute makes District of Connecticut judgments "foreign judgments when sought to be enforced in the District of Connecticut. To the extent that the statute may be construed so as to require additional proof of the validity of our own judgments, it reaches an incongruous result and should not be incorporated as a part of the federal practice by Rule 69 (a)"

Stanford v Utley P268"Principles applicable to an action on a foreign judgment are applicable to registration"

The argument extraneously used by the District Court to reject the clear mandate of Rule 69 is contrary to all law and reason.

III. THE GRANTING BY DISTRICT COURT TO NON-RESIDENT ANDERSON GREATER PRIVILEGES THAN RESIDENTS RECEIVE UNDER THE SAME STATE LAW VIOLATES PRIVILEGES AND IMMUNITIES CLAUSE AND THE EQUAL PROTECTION MANDATE

Constitution Article IV Section 2

"The citizens of each state shall be entitled to all Privileges and immunities of Citizens in the several states"

There is no doubt but that when in October 1978 Anderson moved to become citizen and resident of Connecticut he was barred from attemptng to enforce his foreign judgments in the state courts by state law, GS 52-605 - 609.

Thus the capricious granting of special privildges to non-resident Anderson is a violation of constitutional law well worthy of this court's summary reversal of the judgments below on this petition for certiorari.

State v Nolfi 358 A 2d 853 "State may grant any privilege to its citizens it sees fit but those same rights, privileges and immunities are, by this clause secured to all citizens of all tother states"

This discriminatory granting of extra and inequal treatment to a non-resident that is prohibited to residents using state law in state courts is barred by the equal protection clause.

IV GRANTING SPECIAL TREATMENT TO NON-RESIDENT ANDERSON BY DISTRICT COURT VIOLATES EQUAL PROTECTION PRINCIPLES

Lynden Transport v State, Alaska
532 P 2d 700 1975

"Discrimination between residents and non-residents solely on object of assisting one class over the other economically cannot be upheld under either privileges and immunities clause or equal protection clause"

Sully v American Nat Bank
178 US 289

"A non resident creditor under US Const Art 4 entitled to equal privileges and immunities to share in distribution of a company's assets equally with creditors residing in the state.

This Honorable Court's decision in Sully, supra, would prohibit the order made in the lower court giving the non-resident creditor greater rights, privileges and immunities than the same state law gives to resident creitors.

PART II OF PETITION - THE ERRONIOUS TRANSFER OF COUNTER-CLAIMS TO LOS ANGELES FOR TRIAL

I. TRIAL COURT LACKED JURISDICTION TO MAKE TRANSFER AS ACTION COULD NOT HAVE BEEN BROUGHT IN CALIF.

The controlling law, Title 28 USC 1404 (a) limits transfers to District Courts where the action"could have been brought"

The torts sued on in the counter-claims come from 1969 and events in California caused injury and damages to this Petitioner in Connecticut. The California three year statute of limitations on torts, California Civil Code of Procedure S 338 expired in three years, ending the right to sue in 1971.

CCP 338 -"An action for a statutory cause of action must be brought within three years"

The Connecticut statute of limitations GS 52-577 is also three years but time when the defendants are out of state does not count up to seven years effectively extending time to 1979 and the counter-claims adittedly were timely under Connecticut law.

GS 52-577 "No action on a tort shall be brought but within three years"

GS 52-590 "the time within which a party is outside the state shall be excluded in computing limitations on actions not to exceed 7 years"

Thus it is argued that with Anderson moving to Connecticut in 1978 there was no diversity of citizenship at the time the counter-claims served and no jurisdictional basis to bring the action in California.

California courts simply lacked jurisdiction.

The order by the District Court to "let the California Judge decide these matters" was a clear refusal to do its duty.

The controlling decisions by this court in Hoffman v Blaski, 363 US 335, as modified by Van Dusen v Barrack, 376 US 612, are controlling.

Van Dusen, infra, P 617 -

> "At the outset we must consider whether incapacity of plaintiffs to bring suit in the transferee for forum renders latter forum impermissible under the "might have been brought" limitation"

This principle was disregarded by the transfer order in that no jurisdiction over parties or subject matter existed in California

II. TRIAL COURT FAILED TO MAKE NECESSARY FINDINGS TO SUPPORT THE TRANSFER

The trial court was under a law imposed duty as Title 28 USC 1404 (a) required a finding that the counter-claims "might have been brought in California'" prior to ordering such a transfer. The simple statement - "Let the California judge decide these matters" - is totally insufficient to establish a jurisdictional basis to transfer.

This action should be remanded with direction to the District Court to make the findings required by the law, 28 USC 1404 (a).

III. PROMPT DISMISSAL BY THE LOS ANGELES DISTRICT COURT FOR "LACK OF JURISDICTION" SHOWS TRANSFER ERRONIOUS

Immediately after the counter-claims were transferred to Los Angeles the District Court, Judge Zirpoli, issued an Order to Show Cause, and immediately thereafter ordered the action dismissed for ..."lack of jurisdiction."

This decision promptly made by the District Court of Hartford would have barred a transfer order.

IV. THE ALL WRITS STATUTE GIVES THIS COURT POWER VIA MANDAMUS TO COMPEL THE DISTRICT COURT IN CONNECTICUT TO PROCEED WITH THE COUNTER-CLAIMS

Caleshu v Wangelin
549 F 2d 93 1977

> "Use of mandamus power conferred by all writs statute, 28 USC 1651, is proper way for Court of Appeals to correct erroneous transfer"

CONCLUSION

This Court should summarilly grant the Petition for Certiorari and reverse the orders below and issue a Writ of Mandamus commanding the District Court to proceed with the Counter-Claims or in the alternative probable jurisdiction should be noted.

RESPECTFULLY:

STANLEY V. TUCKER

A 1

SUPERIOR COURT OF CALIFORNIA

Ventura No 50745

JEAN NEAL v STANLEY V. TUCKER

DECLARATION DISQUALIFYING THE HON. ROBERT R. WILLARD PURSUANT TO CCP 170.6

"The undersigned, Stanley V. Tucker hereby declares.

1. That he is defendant in the instant case.
2. That the Hon. Robert R. Willard to whom the instant case may be assigned is so biased and prejudiced against men as against women and against Father as against Mother and against Defendant in this instant action and is so biased or prejudiced or confused in his understandings of rights and duties between Father and Child Child and Mother and Child so that affian believes he cannot have a fair and impartial trial or hearing before said Judge.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Executed at Los Angeles California
Sept 3, 1968.

s/ STANLEY V. TUCKER

A 2

SUPERIOR COURT OF CALIFORNIA

Ventura No 51659

STANLEY V. TUCKER v PAUL B. CRIKELAIR

July 2, 1979

"This cause came on regularly for trial on May 8th, 1970... Defendant appearing and the plaintiff failing to appear.....

It is hereby ordered Defendant recover a total of $17,500 with costs.

ROBERT R. WILLARD
Judge of the Superior Court

A 3

STANLEY V. TUCKER v M. J. TUCKER

1 Ventura Superior Court No 48724

June 25th, 1970

This cause came on regularly for trial on June 9, 1970... Defendant appearing and .... Plaintiff failing to appear.....

It is hereby ordered defendant recover a grand sum of $46,852.50 with costs.....

ROBERT R. WILLARD
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA

A 4

UNITED STATES DISTRICT COURT - CONNECTICUT

Robert R. Anderson v Stanley V. Tucker

No H 74-364 Motion to Dismiss May 23, 1975

"Defendant moves to dismiss this action upon grounds of lack of jurisdiction over the subject matter in that the complaint being a diversity action to enforce claimed judgments fails to conform to UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT, Conn PA 73-498, effective Oct 1, 1973 and must be dismissed upon grounds:

1. Claims flow from California state court defaults and are not enforceable under GS 52-605

2. Plaintiff failed to follow the steps in GS 52-605 and Title 28 USC 1964.

s/ _____
STANLEY V. TUCKER

UNITED STATES DISTRICT COURT-CONN

ROBERT R. ANDERSON v STANLEY V.TUCKER

No H 74-364 Ruling on Motion to Dismiss

"Motion denied.... to the extent that Conn statute setting forth procedures for enforcing foreign judgment may be construed as to require additional proof of validity of judgment of the District of Conn. it reaches an incongruous result and should not be incorporated as a part of federal practice. Conn GS 52-605, FRCP Rule 69 (a) 28 USC 1963"

June 27th, 1975

M. JOSEPH BLUMENFELD

UNITED STATES DISTRICT COURT-CONN.

ROBERT R. ANDERSON v STANLEY V. TUCKER

No H 74-364 July 10th, 1979

RULING ON MOTIONS FOR SUMMARY JUDGMENT

...."this court finds following registered judgments in favor of plaintiff are valid .....

s/M. JOSEPH BLUMENFELD
United Stated District Judge

A 7

UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT No 79-7556

December 27th, 1979

"..... We affirm in all respects the judgment and ordersof the District Court....."

Affirmed.

s/ LEONARD P MOORE

s/ WILLIAM H TIMBERS

CIRCUIT JUDGES

s/LLOYD F MACMAHON
U.S.D.J.

Sitting by Designation

A 8

UNITED STATES DISTRICT COURT- CONNECTICUT

ROBERT R. ANDERSON v STANLEY V.TUCKER

No H 74-364 April 19th, 1979

MOTION BY PLAINTIFF TO SEVER COUNTER-CLAIMS AND TRANSFER TO C. D. CALIFORNIA

Plaintiff moves the court for an order severing counterclaims and transferring them as a separate action to the Central District of California..

Note- handwritten on margin follows

This motion was granted in open court on July 2nd, 1979 and it is hereby endorsed.

s/ M. J. B. USDJ
7-25-79